IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 302 OF 2000

Noor Mohamed Sher Ali Ansari)
@ Ramu Ramraj Varma @ Avinash)
Maikulal Varma).... Appellant.

versus

The State of Maharashtra)..... Respondents.

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Ms. D.M. Shah, advocate appointed for the appellant.
Mrs. U.V. Kejariwal APP for the State.

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CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 15TH OCTOBER, 2004.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the the order of conviction passed by the Additional Sessions Judge, Gr. Bombay in Sessions Case No.411 of 1995 under sections 302 and 392 of IPC on 17-09-1998 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. With the assistance of the learned counsel for the accused and the learned Prosecutor, we have scrutinised the records of the case and re-appreciated the evidence on record.

3. The prosecution case stated briefly is that the accused prior to the date of incident i.e. 29th November 1994 came to the complainant who runs a tea coffee shop and claimed employment. Looking to his financial requirement, it is alleged that the deceased Ram Uday Yadav agreed to employ him on monthly salary of Rs. 400/- with two meals and asked him to work as a servant in the cold drink house. According to the prosecution, in the night intervening 28th and 29th November 1994, the accused and deceased Ram Yadav slept in the shop and in the morning of 29th the deady body of Ram Yadav was discovered in the shop. The accused was missing, so also was the cash. Therefore complaint was lodged. Accused was reported is the suspect. Police investigated the crime and on completion of investigation charge sheeted the accused to face the charge of murder before the learned Sessions Judge.

4. The prosecution examined in all 12 witnesses to prove its case and the learned trial Judge on appreciation of that evidence came to the conclusion that the accused was guilty of offence with which he was charged and therefore the order impugned as mentioned above was passed. It is this order which is challenged by the learned counsel appearing on behalf of the accused on the ground that even if the entire

evidence as led by the prosecution is accepted the conviction is unsustainable in law. On the other ground the learned A.P.P. contended that the evidence of last seen together and employment of the accused by the deceased and the recovery of certain articles is enough to maintain the conviction.

5. The dead body of the deceased Ram Yadav was discovered by P.w.1 who informed the police of the discovery of the dead body and missing cash from the drawer of the shop. The prosecution has examined several other witnesses to prove that the accused was last seen with the deceased. The conviction is based on the following circumstances.

a) The fact of accused seeking employment on 17-11-1994 with the deceased Ram Yadav.

b) Thereafter the accused was working in that cold drink house.

c) The deceased and the accused were last seen together in the night of 29th Nov. 1994 and in the next day morning dead body of the deceased was discovered.

d) The finger prints of the accused were

found in some places in the shop.

Accepting this as adequate evidence the learned Judge proceeded to convict the accused as aforesaid.

6. In our opinion even if the entire evidence of the prosecution is accepted, the conviction is unsustainable in law. In our opinion several links required to be proved in the chain of circumstantial evidence are missing. Admittedly the offence has taken place in a commercial locality where the accused was working. According to the prosecution, the accused was so working there for atleast 10 days prior to the incident, that there is no evidence came forward of any independent nature that anybody in that locality at any time, saw the accused working in the shop or working in the visinity. The claim that,the accused demanded employment and was given one by the deceased Ram Yadav is supported only by the interested testimony of closed relations of deceased Ram Yadav who were along with him as co-proprietors of the cold drink house. There is therefore no proof that the accused was factually employed by the deceased. Apart from this aspect the evidence of these witnesses reveal that they made no enquiries whatever of the antecedents of the accused before employing him in the shop. Such employment in the present day circumstances in the city of Bombay is

very rear. In such circumstances therefore the evidence of independent nature, on factual employment of the accused by the deceased is necessary. The important link in this regard is therefore absent.

7. There is no evidence of independent nature that the accused along with the deceased slept in the shop. The evidence led by the prosecution says that the accused and the deceased slept in the cold drink house in the night. The fact that they slept together in the shop is not established. This therefore is the second link which is necessary.

8. The prosecution has used the services of finger print expert. Finger Prints of the accused were found in several places in the shop. Finding of such finger prints of the accused in the shop is natural, if the story of the prosecution regarding employment of the accused is to be believed. But inspite of the fact that the services of finger print's expert were used, no finger prints were found on the drawer from which it is alleged an amount of Rs. 1500/- was missing. The prosecution has failed to prove that the accused did factually touch the drawer and took away the money. This is third important link of evidence, which is missing. No finger prints were found on the cash box/drawer. This evidence is to be appreciated in the

light of the fact that the finger prints of the accused were found in some other places in the hotel. The possibility of the accused being in the shop and the cash drawer cannot therefore be overruled. There is therefore no evidence of any motive on the part of the accused to prove that he is the person who has committed the offence.

9. There is also no evidence that in the night of 28th November 1994 the accused was seen at the shop and was sleeping there with the deceased. Nodboy saw the accused living there and the locality was commercial in nature and therefore there was adequate evidence of independent nature available to prove the employment of the accused by the deceased and that he was working there for past 10 days. In such circumstances, even if the entire evidence of the prosecution is accepted, it is impossible to come to the conclusion that the homicidal death of Ram Yadav was intentionally caused by the accused. In our opinion the learned trial Judge has missed these important aspects and therefore erred in convicting the accused as aforesaid. In our opinion, the appeal must succeed and is therefore allowed. The accused be released forthwith if not otherwise required.

10. The fees quantified to the ld. advocate appointed and the ld. APP is Fs. 750/- for this appeal.

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